UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,398	09/16/2004	Alexander P. RIGOPULOS	HXT-007	5397

959 7590 02/26/2007

LAHIVE & COCKFIELD, LLP
ONE POST OFFICE SQUARE
BOSTON, MA 02109-2127

EXAMINER	
RENDON, CHRISTIAN E	
ART UNIT	**PAPER NUMBER**
3714	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/711,398	RIGOPULOS, ALEXANDER P.	
	Examiner	Art Unit	
	Christian E. Rendón	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 July 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,7,11-21,23,24 and 27-80* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-2, 7, 11-21, 23-24 and 27-80* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *16 September 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

1. Claims 1, 33, and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. For example the offering for sale in a "manner typically associated with recorded music products" fails to particularly point out the invention. The manner with which recorded music products are constantly changing, retailers and businesses are constantly thinking of innovative ways with which to deliver products to consumers. Specifically in the music products, over the last few decades these products were relegated only to specialty stores (i.e.: music or record stores) but are also found as items for purchase in electronic stores. More recently retailers have now begun to operate virtual stores via the Internet. The offering of sale of products in the music industry and consumer products industry is constantly changing which fails to limit the claims and therefore the limitation has been deemed indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 24 and 73-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis ('Karaoke Revolution') in view of Perry ('Britney's Dance Beat').

2. Lewis discloses a game that provides the challenge of singing properly to a selection of popular American songs into a microphone. Therefore the player is partially responsible for the performance of the selected song. The game also requires the use of the game controller to perform various tasks from selecting a song to voting. Certain songs are exclusive to the game, for instance the main theme of the game and the title screen song. Lewis fails to disclose if there is a computer rendition of the actual musician in the game and if you play as them. The game 'Britney's Dance Beat' requires the player to rhythmically press the buttons to the beat of Britney Spear's hit songs. Therefore the player's a partially responsible for the performance of the song that is associated with an artist. The game has a computer rendition of Britney Spears but lacks the ability to 'dance' as Britney Spears. This is mere design choice since dancing as Britney Spears or as one of the created characters does not change the core of the game, dancing to the songs of Britney Spear. It would be obvious to one of ordinary skill in the art of video games to combine the two cited arts, to further entertain the player with computer renditions of the musical artist.

Claims 7, 35, 55 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis ('Karaoke Revolution') as applied to claims above, and further in view of Kumar et al. (US 6,514,083 B1).

3. Lewis discloses a game that provides the challenge of singing properly to a selection of popular American songs into a microphone. The game also requires the use of the game controller to perform various tasks from selecting a song to voting. Lewis is silent with regards to implementing a user input received via a camera. In an analogous karaoke system, Kumar et al. teaches the implementation of a camera producing a series of video frames including at least one performer and a karaoke processor system providing a video environment for the karaoke

performer. Kumar teaches the ability to extract images from the camera to be placed into the virtual environment of the karaoke video display (see abstract). Kumar teaches that one would be motivated to incorporate this element into a standard karaoke system to further enhance the "interactive participation of karaoke customers with their karaoke experience" (see col. 2: ln 33-35). Therefore it would be obvious to one of ordinary skill in the art at the time of the invention to incorporate the camera of Kumar with the music-based game of Tsai to create a more realistic karaoke experience.

Claims 1, 11-17, 19-21, 23, 27-32, 53 and 56-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis ('Karaoke Revolution') in further view of 'Karaoke Revolution' via www.samgoody.com.

4. Lewis discloses a DVD game that provides the challenge of singing properly to a selection of popular American songs into a microphone. Therefore the player is partially responsible for the performance of the selected song. The game displays a musical time axis on top of a rendered image of a musician in an environment. The game also requires the use of the game controller to perform various tasks from selecting a song to voting. Certain songs are exclusive to the game, for instance the main theme of the game and the title screen song. Lewis fails to disclose how the game will be sold and packaged. All new video games are given an ESRB (www.esrb.org) rating score in the form of indicia on packaging, which is the same for albums. In this office action the Sam Goody website is used to represent the physical store and an online music store. Sam Goody is known as specialty music store but they do sell other products like books, videogames and movies. The website discloses all of the marketing methods that are used to sell the game, product placement, purchase price, advertising and the use of a distribution channel that are all usual associated with music products. Therefore it

would be obvious to combine the cite arts in order to increase the products exposure to the non-hardcore gaming community, the general public.

Claims 33 and 36-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis ('Karaoke Revolution') in further view of 'Karaoke Revolution' via www.walmart.com.

5. Lewis discloses a DVD game that provides the challenge of singing properly to a selection of popular American songs into a microphone. Therefore the player is partially responsible for the performance of the selected song. The game displays a musical time axis on top of a rendered image of a musician in an environment. The game also requires the use of the game controller to perform various tasks from selecting a song to voting. Certain songs are exclusive to the game, for instance the main theme of the game and the title screen song. Lewis fails to disclose how the game will be sold and packaged. All new video games are given an ESRB (www.esrb.org) rating score in the form of indicia on packaging, which is the same for albums. In this office action the Wal-Mart website is used to represent the physical store and an online music store. Wal-Mart is known as a general store that has their products separated into departments like clothing, toys, and music. The website discloses all of the marketing methods that are used to sell the game, product placement, purchase price, advertising and the use of a distribution channel that are all usual associated with music products. Therefore it would be obvious to combine the cite arts in order to increase the products exposure to the non-hardcore gaming community, the general public.

Claims 2, 34 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith ('Dance Dance Revolution').

6. Smith teaches of a video game that uses selected music content by the user in creating a music-based video game. This series is commonly known in the art as part of the "Bemani" (see Gertsmann "'DrumMania (Import) for definition of Bemani-series") genre. The genre incorporates such video games as rhythm action video games (see Perry "Amplitude"), singing video games (see Lewis "Karaoke Revolution", dancing video games (see Davis, 'Dance Dance Revolution'), shooting games (see "Rez"), and character action games (see Gertsmann, "Vib-Ribbon"). Smith discloses the claimed invention except that it only incorporates a dancing video game that requires showing a rhythm instead of singing, shooting, and character action game. However as previously stated the references cited above teach that these are old and well known embodiments of the "Bemani" game genre and were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute any of the following types for the other.

Response to Arguments

7. Applicant's arguments with respect to claims 1-2, 7, 11-17, 19-21, 23-24 and 27-80 have been considered but are moot in view of the new ground(s) of rejection. Despite the changes made to claim 1, the claim is still found to be indefinite because the phrase "manner typically associated with recorded music products" offers no limitation to the claim. Claims 1, 33 and 53 are rejected under the grounds stated above but are also found to be duplicate claims since there is no patently distinct limitation offered by a "specialty music store", "music department of a general store" and an "online music store." It is well known in the art of marketing to place items in an organized fashion to make it easier for the consumer to locate an item or to place related items next to each other to make it easier for the consumer to find a new product. For example a person can walked into a 'Sam Goody' or a 'FYE' or log on to their respective web

stores to purchase the 'Legend of Zelda: Twilight Princess' for the Nintendo Gamecube even though these chains are mostly known as specialty music stores. The same holds true for a general store like Wal-Mart, Target and K-Mart and the reason is because the retail store wants to maximize the opportunities to make a profit by offering every source of entertainment goods.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Takase et al. (US 6,450,888 B1) - Game System and Program (Dance Dance Revolution specification).

Suzuki et al. (US 6,227,968 B1) - Dance Game Apparatus and Step-On based for Dance Game.

Nobi et al. (US 6,786,821 B2) - Game Machine, Game Processing Method and Information Storage Medium.

Kim et al. (US 6,554,706 B2) - Methods and Apparatus of Displaying and Evaluating Motion Data In a Motion Game Apparatus.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on

the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christian E. Rendón whose telephone number is 571-272-3117. The examiner can normally be reached on 9 - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christian E Rendón
Examiner
Art Unit 3714

CER

Ronald Laneau
Primary Examiner
2/10/07